

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
September 27, 2010

D057146 In re Gabriel W.

The judgment is affirmed. Irion, J.; We Concur: Nares, Acting P.J., McDonald, J.

D056165 People v. Simmons

The convictions on count 5 and counts 12 through 18 are reversed. The matter is remanded for resentencing. In all other respects, the judgment is affirmed. Irion, J.; We Concur: McConnell, P.J., Aaron, J.

D053810 People v. Torres

The conviction on count 3 is reversed; in all other respects, the judgment is affirmed. McDonald, J.; We Concur: Haller, Acting P.J., Aaron, J.

D056232 People v. Thephommy

The judgment is affirmed.
O'Rourke, J.; We Concur: McConnell, P.J., McDonald, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
September 28, 2010

D055814 People v. Parrish

The judgment of conviction is affirmed.
Benke, J.; We Concur: McConnell, P.J., McDonald, J.

D056124 In re Jessica H., a Juvenile

The orders are affirmed. Nares, Acting P.J.; We Concur: Haller, J., Irion, J.

D053520 People v. Ruiz et al.

As to Ruiz, the judgment is reversed as to counts 7 and 11. The trial court is directed to amend the abstract of judgment accordingly and to forward an amended abstract to the Department of Corrections and Rehabilitation. In all other respects, the judgment against Ruiz is affirmed. As to Diaz, the judgment is affirmed. Nares, J.; We Concur: McConnell, P.J., O'Rourke, J.

D055908 People v. Contreras

The judgment is affirmed. Haller, J.; We Concur: Nares, Acting P.J., McDonald, J.

D056016 Rabanne v. Valencia et al.

The August 28, 2009 order is affirmed. Defendants are to bear costs on appeal. Aaron, J.; I Concur: McConnell, P.J., I Concur in the Result: O'Rourke, J.

D057229 In re K.H., a Juvenile

The orders are affirmed.²

² In light of our resolution of the case, we do not address the Agency's motion to dismiss portions of the minor's brief. We deny the motion as moot.

Haller, Acting P.J.; We Concur: McDonald, J., Aaron, J.

D057271 In re Eric M., a Juvenile

The orders are affirmed. McIntyre, J.; We Concur: McConnell, P.J., Aaron, J.

D055726 People v. Tran

The judgment is affirmed. Irion, J.; We Concur: McConnell, P.J., O'Rourke, J.

D057865 In re Cooper on Habeas Corpus

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
September 28, 2010 (Continued)

- D058211 Evans v. The Superior Court of San Diego County/People**
The motion to review evidence presented at the preliminary examination has been read and considered by Presiding Justice McConnell and Associate Justices O'Rourke and Irion. The motion is deemed a petition for writ of mandate. The petition is denied. The request for appointment of counsel is denied.
- D058212 In re O'Dell on Habeas Corpus**
The petition is denied.
- D057792 Nicole O. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**
No timely petition for writ relief has been filed. The notice of intent is deemed to be abandoned. The case is dismissed.
- D058139 B.H. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**
The attorney for petitioner B.H. has notified the court that a petition for writ of mandate under California Rules of Court, rule 8.452 will not be filed as there are no viable issues for writ review. Counsel's request, on petitioner's behalf, for an extension of time to file a petition is denied. The case is dismissed.
- D058054 J.P. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**
The attorney for petitioner J.P. has notified the court that a petition for writ of mandate under California Rules of Court, rule 8.452 will not be filed as there are no viable issues for writ review. Counsel's request, on petitioner's behalf, for an extension of time to file a petition is denied. The case is dismissed.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
September 29, 2010

D055827 People v. Cooper

The judgment of conviction is affirmed.
Benke, Acting P.J.; We Concur: O'Rourke, J., Aaron, J.

D056397 Discovery at Cortez Hill Homeowners Association v. Noble

The order compelling Noble to grant Association and its agents access to his condominium unit to inspect is affirmed. The order permitting Association and its agents to make repairs to cure the plumbing problem is reversed. The trial court is directed to modify the order to read; "IT IS ORDERED that Defendant Frank E. Noble ("Noble") grant plaintiff Discovery at Cortez Hill Homeowners Association ("Association") and its agents access to defendant Noble's condominium unit located at 850 Beech Street, Unit No. 803, San Diego, California 92101 to inspect the plumbing problem and conduct destructive testing to assess the nature and scope of the problem and need for repairs. Defendant Noble and/or his representatives are entitled to be present during the inspection and testing and to take photographs or otherwise memorialize the actions taken by plaintiff Association. To the extent plaintiff Association seeks reimbursement for any expenses incurred herein and/or this case proceeds to trial then the ruling on this motion is without prejudice to defendant Noble offering whatever opinions are appropriate at that time. Plaintiff Association's undertaking is set at \$5,000.

Association shall recover its costs on appeal.
O'Rourke, J.; We Concur: Haller, Acting P.J., McDonald, J.

D056113 People v. Brown

The judgment is affirmed.
O'Rourke, J.; We Concur: Huffman, Acting P.J., McIntyre, J.

D055453 Concordia Homes of California, LLC v. Jack et al.

The judgment is affirmed and the matter remanded to the trial court for a determination of the proper amount of attorney fees on appeal in accordance with this opinion. In addition to attorney fees, respondents Don Jack, Pacific View, Ltd. and Farwest American Trust Contractual Business Organization shall recover costs on appeal. O'Rourke, J.; We Concur: Huffman, Acting P.J., Haller, J.

D055998 Nagel v. Davidson

Order affirmed. Appellant to pay respondent's costs on appeal.
Haller, J.; We Concur: Huffman, Acting P.J., Nares, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

September 29, 2010 (Continued)

- D055124 Agnew v. Mangini et al.**
The order is affirmed, and the matter is remanded to the trial court for its determination of an attorney fees award to Mangini for the appeal. Mangini is also entitled to costs on appeal. McConnell, P.J.; We Concur: McIntyre, J., Irion, J.
- D057019 In re Sarah L. et al., Juveniles**
The judgments are affirmed. Nares, J.; We Concur: Benke, Acting P.J., Irion, J.
- D056403 People v. Gibbs**
The judgment is affirmed.
Huffman, Acting P.J.; We Concur: Nares, J., McIntyre, J.
- D056447 People v. Trujillo**
The felony conviction for count 7 is reduced to a misdemeanor conviction for violating section 148.9. In all other respects, the judgment is affirmed, and the case is remanded to the superior court for resentencing in light of the elimination of the felony conviction for count 7.
Huffman, J.; We Concur: Benke, Acting P.J., Nares, J.
- D058109 Pella Corporation v. Superior Court of San Diego County/Parkloft Condominium Owners Association et al.**
The petition is denied.
- D057319 In re Mizner on Habeas Corpus**
The petition is denied.
- D058231 Kelsall v. The Superior Court of San Diego County/Law Office of Beatrice Snyder, APC**
The petition is denied.
- D055382 People v. Morgan**
The judgment is affirmed. With respect to count 3, the trial court is directed to correct the abstract of judgment to state that Morgan was convicted of a violation of section 203, and to forward the corrected abstract of judgment to the Department of Corrections and Rehabilitation.
Aaron, J.; We Concur: McIntyre, Acting P.J., Irion, J.
- D057739 People v. Accredited Surety & Casualty Company, Inc.**
Appellant's Motion to Set Aside Dismissal of Appeal and Reinstate Appeal is granted. Appellant's Designation of Clerk's and Reporter's Transcripts is due on or before 10 days from the date of this order.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

September 29, 2010 (Continued)

D057963 Rita D. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Rita D. has notified the court that a petition for writ of mandate under California Rules of Court, rule 8.452 will not be filed as there are no viable issues for writ review. Counsel's request, on petitioner's behalf, for an extension of time to file a petition is denied. The case is dismissed.

D057999 In re Bravo on Habeas Corpus

The petition is denied.

D058074 In re Baker on Habeas Corpus

The petition for writ of habeas corpus has been read and considered by Presiding Justice McConnell and Associate Justices O'Rourke and Irion. We take judicial notice of direct appeal No. D036645 and petition Nos. D038040, D042686, D057696 and D057797.

The petition is denied as repetitive because it is substantially identical to the petition filed as No. D057797.

D057902 In re Bravo on Habeas Corpus

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
September 30, 2010

- D056005 *Alvarez v. Kmart Holding Corporation***
The judgment is affirmed. Kmart shall recover its costs on appeal.
Haller, J.; We Concur: Huffman, Acting P.J., Nares, J.
- D057415 *In re C.I., a Juvenile***
The appeal is dismissed. Nares, J.; We Concur: Huffman, Acting P.J., Aaron, J.
- D057099 *In re J.C., a Juvenile***
The order is affirmed. Haller, J.; We Concur: McConnell, P.J., Huffman, J.
- D056903 *In re Estrada on Habeas Corpus***
The BPH shall vacate its decision finding Estrada unsuitable for parole and conduct a new parole suitability hearing within 30 days of the issuance of the remittitur in this matter, in accordance with due process of law and consistent with the decision of this court and the principles of res judicata. Pursuant to California Rules of Court, rule 8.387(b)(3)(A), this opinion shall be final as to this court within five days after it is filed. McDonald, J.; We Concur: Nares, Acting P.J., McIntyre, J.
- D055001 *In re Marriage of Dolansky and Overton***
The order is affirmed. Dolansky is awarded costs on appeal.
McIntyre, J.; We Concur: Haller, Acting P.J., Aaron, J.
- D057553 *In re Aisha A., a Juvenile***
The appeal is dismissed. McConnell, P.J.; We Concur: Nares, J., Haller, J.
- D055945 *Brodgen Properties, Inc., et al. v. City of Oceanside et al.***
The judgment is affirmed. Defendants shall receive costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1).) McIntyre, J.; We Concur: Benke, Acting P.J., Nares, J.
- D057194 *People v. Muhummed***
The opinion filed on September 8, 2010, is modified. There is no change in judgment. The petition for rehearing is denied.
- D055549 *Sandell v. Taylor-Listug, Inc.***
In its petition for rehearing, respondent raises an argument that was neither briefed nor argued in the appeal. The court declines to entertain that argument since it was raised for the first time in the petition for rehearing. The petition for rehearing is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
September 30, 2010 (Continued)

- D058044 In re Mortera on Habeas Corpus**
The petition is denied.
- D058100 Lewis Brisbois Bisgaard & Smith, LLP v. Allen**
Because appellant did not timely pay the filing fee, the appeal is dismissed.
(Cal. Rules of Court, rule 8.100(c)(3).)
- D055395 Gough-Aoshima v. Archer**
The appeal is treated as a petition for writ of mandate. The petition is denied.
Defendants shall recover their costs.
Nares, Acting P.J.; We Concur: McDonald, J., O'Rourke, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 1, 2010

D055612 People v. Johnson

The three-year concurrent sentence imposed for count 5 (possession for sale of cocaine base on December 9 in violation of §11351.5) is ordered stayed pursuant to Penal Code section 654. The trial court is directed to prepare an amended abstract of judgment to reflect this modification of the sentence and to forward a certified copy of the amended abstract to the Department of Corrections and Rehabilitation. Johnson's admissions regarding the truth of the enhancement allegations are set aside. As so modified, the judgment in all other respects is affirmed.
Nares, Acting P.J.; We Concur: Haller, J., O'Rourke, J.

D057276 K.L. Management, LLC v. Peterson

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 8.220(a). The appeal is dismissed.